IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

RSA.No. 792 of 2007()

AS.4/2005 of SUB COURT,CHERTHALA
OS.673/2001 of MUNSIFF COURT, CHERTHALA

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: APPELLANT/APPELLANT/DEFENDANT

R.RAJAN, S/O RAMAKRISHNAN,
RESIDING AT NEDUMPARAMBIL, CHERUVARANAM MURI,
THANNEERMUKKOM NORTH VILLAGE, CHERTHALA.

BY ADV. SRI.J.OM PRAKASH

RESPONDENT: RESPONDENT/PLAINTIFF

C.V.KRISHNA SHENOY,
S/O VENKITA SHENOY,
RESIDING AT RESHMI, CHERTHALA NORTH MURI,
NORTH VILLAGE, CHERTHALA P.O.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 04/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 792 OF 2007

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Dated this the 4th day of October 2007

JUDGMENT

Appellant is the defendant in O.S.673/2001 on the file of Munsiff Court, Cherthala. Respondent is the plaintiff. Respondent instituted the suit for realisation of the amount due from the appeallant. The trial court granted a decree. Appellant filed A.S.4/2005 before the Sub Court, Cherthala with an application to condone the delay of 106 days in filing the appeal. First appellate court dismissed the application for condonation of delay. Consequently the appeal was dismissed. It is challenged in the second appeal.

2. Learned counsel appearing for appellant was heard.

3. The argument of learned counsel is that first appellate court should have granted an opportunity to the appellant to have a decision on merits and in such circumstance, dismissal of the

appeal after dismissing the application to condone the delay is to be set aside.

4. On hearing the learned counsel appearing for appellant, I do not find any substantial question of law involved in the appeal.

5. The case of the respondent was that appellant had borrowed Rs.50,000/- from the respondent and towards repayment of that amount a cheque was issued and when it was presented for encashment, it was dishonoured for want of sufficient funds. Respondent has also initiated proceedings under section 138 of Negotiable Instruments Act and under Ext.A7 judgment appellant was convicted by the learned Magistrate. The learned Munsiff on appreciation of evidence found that the case of the respondent that appellant borrowed the amount is correct. That decision was arrived on appreciation of evidence. Even if the evidence is to be reappreciated, the view taken by the trial court is the only view that could be taken on the evidence. In such circumstance, I do

not find any substantial question of law involved in the appeal. Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006